



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,578	12/14/2001	Stephen M. Brinkman	B-0114.07	6140

7590 11/04/2003

LAW OFFICES OF CHRISTOPHER L. MAKAY  
1634 Milam Building  
115 East Travis Street  
San Antonio, TX 78205

EXAMINER

HAYES, BRET C

ART UNIT	PAPER NUMBER
----------	--------------

3644

DATE MAILED: 11/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicati n No.

10/017,578

licant(s)

BRINKMAN, STEPHEN M.

Examin r

Bret C Hayes

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 August 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 25-32 and 39-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 25-32 and 39-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 25 and 27 rejected under 35 U.S.C. 102(b) as being anticipated by Martin ('964).  
3. '964 discloses the claimed invention including: (claim 25) a lure 1 comprising a body 4, and a tail 3 including an aperture 9 that receives fishing line 8 therethrough; and (claim 27) wherein the aperture 9 facilitates movement of the tail 3 along the hook or fishing line 8, thereby simulating game fish prey motion.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 28, 30, 31 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin ('964).  
6. Re – claim 28, '964 discloses the claimed invention except for the tail being removably attached to the body. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the tail be removably attached to the body, since it has been

Art Unit: 3644

held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

7. Re – claims 30 and 31, ‘964 discloses the claimed invention except for a sleeve coupled with the tail. The addition of a sleeve to the lure would be obviated by the aperture 9 of ‘964, since it is well known in the analogous art of guiding shafts through apertures to use sleeves, i.e., wear items such as bushings, for the purpose of limiting the wear on the aperture itself.

8. Re – claim 39, ‘964 discloses the claimed invention except for the tail 3 moving, arguably completely, underneath the body 4. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the tail move completely underneath the body, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

9. Claims 29 and 32 are rejected under 35 U.S.C. § 103 as being unpatentable over Martin (‘964) in view of Cannon (‘567).

10. ‘964 discloses the invention substantially as claimed. However, ‘964 does not disclose the lure including a barb guard.

11. ‘567 teaches guarding a barb 61 with a lure 20 in the same field of endeavor for the purpose of preventing snagging, as set forth in col. 3, line 4.

12. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify ‘964 to include a barb guard as taught by ‘567 in order to prevent snagging.

Art Unit: 3644

13. Claims 40 and 41 are rejected under 35 U.S.C. § 103 as being unpatentable over either Martin ('063) or Martin ('964), as applied to the claims above.

14. Both '063 and '964 disclose the invention substantially as claimed. However, neither discloses the use of a sleeve passing through the tail for passing the fishing line through.

15. The addition of a sleeve to the lure manipulator would be obviated by either the aperture 18 of '063, or the aperture 9 of '964, since it is well known in the analogous art of guiding shafts through apertures to use sleeves, i.e., wear items such as bushings, for the purpose of limiting the wear on the aperture itself.

#### ***Response to Arguments***

16. Applicant's arguments filed 28 August 2003 have been fully considered but they are not persuasive.

17. Regarding the argument that Martin does not disclose the claimed limitation of a fishing line passing through an aperture and instead recites a leader passing therethrough, examiner asserts that leaders are made of fishing line and, therefore, are the claimed limitation of fishing line passing through an aperture.

#### ***Conclusion***

18. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

Art Unit: 3644

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306 – 0553. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Jordan, can be reached at (703) 306 – 4159. The fax number is (703) 872 – 9306.

bh

11/1/03

*Charles T. Jordan*  
CHARLES T. JORDAN  
SUPERVISOR, PATENT EXAMINER  
TECHNOLOGY CENTER 3600